

COMMISSIONER'S DIRECTIVE #13

AUGUST 2011

(Replaces Directive #13 dated August 2010)

DISCLAIMER: Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Claim for Refund Procedures

EFFECTIVE DATE: Upon Publication

REFERENCES: IC 6-3-4-8; IC 6-8.1-1-4; IC 6-8.1-9-1; 45 IAC 15-9-2

Introduction

This directive sets forth the procedures that are to be followed by all taxpayers who file a claim for refund pursuant to IC 6-8.1-9-1 and outlines the proper manner in which the Indiana Department of Revenue will discharge its duties under the statute.

Authority

IC 6-8.1-9-1 establishes both the rights and the remedies for a taxpayer who determines that more tax has been paid than is legally due. This section is in contrast to IC 6-8.1-9-2, where the Department finds that a taxpayer has paid more tax than is legally due.

Section 1. Filing a Claim for Refund

A. Timeliness of Claim

IC 6-8.1-9-1(a) provides the general statutory period within which a claim for refund may be filed. The prerequisite for obtaining a refund is that the taxpayer must file the claim with the Department within three years after the later of the following:

- (1) The due date of the return;
- (2) The date of payment; or
- (3) In the case of a return filed for the state gross retail or use tax, the gasoline tax, special fuel tax, or motor carrier fuel tax, the end of the calendar year that contains the taxable period for which the return is filed.

Note: There are two exceptions to the general three-year time period in which a claim for refund must be filed:

- Income Withholding
 - Pursuant to IC 6-3-4-8(h), the period within which a taxpayer can file an original claim for refund for taxes withheld is limited to two years.
- Utilities Used in Manufacturing
 - Pursuant to IC 6-8.1-9-1(h), a refund claim for sales tax based on predominant use under IC 6-2.5-4-5(c)(3) or the exemption provided under IC 6-2.5-5-5.1 for utilities must be filed with the Department within 18 months after the date of payment.
 - Includes manufacturing, production, processing, repairing, mining, refining, oil extraction, mineral extraction, irrigation, agriculture, horticulture, floriculture, and arboriculture

IC 6-8.1-1-4 defines “due date” to include the last day of an extension period. If an extension of time is applicable for the tax period for which the overpayment is claimed, the taxpayer must provide the Department with information verifying the extension.

If the Department determines that the claim for refund is barred by the statute of limitations, the taxpayer will receive a Refund Denial letter.

B. Substance and Form of Claim

The claim for refund must be filed on a Claim for Refund (Form GA-110L), an amended income tax return, or a withholding tax return (Form WH-3) that indicates an overpayment of tax.

IC 6-8.1-9-1(a) also mandates that the claim must set forth the amount of the refund claimed and the reasons that the taxpayer is entitled to the refund. 45 IAC 15-9-2(d) provides that the claim for refund must set forth:

- (1) The amount of refund claimed;

- (2) A sufficiently detailed explanation of the claim so that the Department can determine its correctness;
- (3) The tax period for which the overpayment is claimed; and
- (4) The year and date the overpayment was made.

Pursuant to IC 6-8.1-9-1(b), which requires the Department to consider the claim for refund, the Department, as part of its consideration of the claim, may request any additional information that might be necessary in making a determination regarding the validity of the claimed overpayment. If the information requested is not provided and the Department therefore lacks sufficient information to grant the refund, the claim will be rejected and returned to the taxpayer or denied. The taxpayer who has failed to provide the Department with the necessary requested information will receive a notice of the Department's decision. This notice will be in the form of a letter informing the taxpayer of the Department's action. The decision by the Department to reject and return a claim for refund due to insufficient information **does not** constitute a refund denial. For purposes of the applicable statute of limitations period in which the taxpayer may file a claim for refund, such statutory limitation is not suspended (or tolled) by the submission of an incomplete claim for refund, nor will interest accrue from the date of the original submission of the incomplete claim for refund in the event a subsequent claim for refund is submitted and granted.

If the Department grants the claim for refund in full, payment of the claim is sufficient notice of the Department's decision. If the Department grants the claim for refund in full and credits any of the amount granted to the taxpayer's future or current tax liabilities, the taxpayer will receive notice of the Department's determination and resulting credit(s) allocated.

If the claim for refund is denied in part or in full, the taxpayer will receive a Refund Denial letter with an attached explanation stating the reason(s) for such denial. Payment of the portion of the claim that has been granted is sufficient notice of the Department's decision regarding such portion. If the Department grants the claim for refund in part and credits any of the amount granted to the taxpayer's future or current tax liabilities, the taxpayer will receive notice of the Department's determination and resulting credit(s) allocated.

If the taxpayer receiving a Refund Denial letter does nothing, the Refund Denial letter becomes the Department's final determination as to the refund requested. If the taxpayer receiving a Refund Denial letter requests an administrative hearing (as discussed in Section 2 of this directive), the Refund Denial letter is treated as a preliminary decision.

All Refund Denial letters will conclude with the following language:

If the taxpayer disagrees with any part of the Department's decision, the taxpayer has 60 days from the date the Refund Denial letter is mailed to file a request with the Department of Revenue for an administrative hearing. The taxpayer can learn

more about filing a request for administrative hearing by consulting the Department's website at www.in.gov/dor/

If the taxpayer fails to file a timely request for administrative hearing, the taxpayer has 90 days from the date the Refund Denial letter is mailed to file an appeal with the tax court. By filing a timely request for hearing, the taxpayer has 90 days from the date of the Memorandum of Decision or Final Order Denying Refund to file an appeal with the tax court.

Section 2. The Appeals Process—Requesting an Administrative Hearing

If a taxpayer's claim for refund has been denied but the taxpayer disagrees with the Department's determination, the taxpayer can request an administrative hearing on the issue. The Department shall, if requested by the taxpayer within 60 days of the mailing date of the Department's Refund Denial letter, hold a hearing on the claim for refund for purposes of obtaining and considering additional evidence. The Department will not initiate the hearing process. To request a hearing, the taxpayer should attach a request to a copy of the claim for refund form originally submitted to the Department.

Example: The Department issues the taxpayer a Refund Denial letter dated June 1 indicating that the taxpayer's claim for refund has been denied. The taxpayer receives the Refund Denial letter on June 5. The taxpayer has 60 days, beginning June 1, in which to request an administrative hearing appealing the decision.

If the Department decides to grant the claim for refund in full based on information provided after the Refund Denial letter but prior to a hearing, the hearing will not be conducted. Payment of the claim is sufficient notice of the Department's decision.

If the Department decides to grant the claim for refund in part based on information provided after the Refund Denial letter but prior to a hearing, the hearing will not be conducted. The taxpayer will receive a revised or supplemental Refund Denial letter with an attached explanation stating the reason(s) for such denial. Payment of the portion of the claim that has been granted is sufficient notice of the Department's decision regarding such portion.

If the taxpayer disagrees with the Department's revised or supplemental Refund Denial letter, the taxpayer can request an administrative hearing on the issue. The Department shall, if requested by the taxpayer within 60 days of the mailing date of the Department's revised or supplemental Refund Denial letter, hold a hearing on the claim for refund for purposes of obtaining and considering additional evidence. The Department will not initiate the hearing process. To request a hearing after a revised or supplemental Refund Denial letter, the taxpayer should attach a request to a copy of the claim for refund form originally submitted to the Department.

Once a hearing date has been confirmed, failure to provide sufficient evidence to verify the claimed overpayment will result in a Final Order Denying Refund. Failure to appear at the administrative hearing will result in a Final Order Denying Refund noting such failure to appear with an attached explanation of the Department's reason(s) for denial.

If, subsequent to the hearing, the Department determines that the claim will be granted in full, the taxpayer will receive a Memorandum of Decision with an attached explanation stating the reason(s) for the decision.

If, subsequent to the hearing, the Department denies a portion of the claim, the taxpayer will receive a Memorandum of Decision with an attached explanation stating the reason(s) for the decision. If the taxpayer does nothing, that portion of the Memorandum of Decision denying a portion of the refund is treated as the Department's final determination.

If, subsequent to the hearing, the Department denies the entire claim, the taxpayer will receive a Final Order Denying Refund with an attached explanation stating the reason(s) for denial.

Section 3. The Appeals Process—Filing an Appeal with the Tax Court

Subsequent to or in lieu of the administrative hearing process, any taxpayer in receipt of a Refund Denial letter, a Memorandum of Decision, or a Final Order Denying Refund has a statutory remedy for appeal with the Indiana Tax Court as provided under IC 6-8.1-9-1(c). Each Refund Denial letter, Memorandum of Decision, and Final Order Denying Refund will be dated, and the date will correspond with the date the Department mails the determination to the taxpayer. Unless, as in the case of a Refund Denial letter, the Department subsequently grants a hearing on the claim for refund, the date the determination is mailed will begin the 90-day period within which an appeal must be filed with the Indiana Tax Court.

IC 6-8.1-9-1(c) states:

If the person disagrees with any part of the Department's decision, the person may appeal the decision, regardless of whether or not the person protested the tax payment or whether or not the person has accepted a refund. The person must file the appeal with the tax court. The tax court does not have jurisdiction to hear a refund appeal suit, if:

- (1) the appeal is filed more than three years after the date the claim for refund was filed with the Department;
- (2) the appeal is filed more than 90 days after the date the Department mails the decision of denial to the person; or

- (3) the appeal is filed both before the decision is issued and before the 181st day after the date the person files the claim for refund with the Department.

Example: The Department issues the taxpayer a Refund Denial letter dated June 1 indicating the taxpayer's claim for refund has been denied. The Refund Denial letter is mailed on June 1. On June 15, the taxpayer appeals the decision to the Legal Division requesting an administrative hearing. The Legal Division conducts an administrative hearing and subsequently issues either a Final Order Denying Refund or a Memorandum of Decision dated September 1; the document issued on September 1 constitutes the Department's final determination of the matter. The taxpayer has 90 days, beginning September 1, in which to appeal the Department's final determination to the Tax Court. If the taxpayer does not file an appeal with the Tax Court within three years from the date the taxpayer filed his or her claim for refund, the taxpayer is precluded from filing an appeal with the Tax Court.

Example: The Department issues the taxpayer a Refund Denial letter dated June 1 indicating the taxpayer's claim for refund has been denied. The Refund Denial letter is mailed on June 1. Subsequent to the Refund Denial letter, the taxpayer does not request an administrative hearing with the Legal Division. The Refund Denial letter mailed on June 1 constitutes the Department's final determination of the matter. The taxpayer has 90 days, beginning June 1, in which to appeal the Department's final determination to the Tax Court. If the taxpayer does not file an appeal with the Tax Court within three years from the date the taxpayer filed his or her claim for refund, the taxpayer is precluded from filing an appeal with the Tax Court.

Example: The Department issues the taxpayer a Refund Denial letter dated June 1 indicating the taxpayer's claim for refund has been denied. The Refund Denial letter is mailed on June 15. Subsequent to the Refund Denial letter, the taxpayer does not request an administrative hearing with the Legal Division. The Refund Denial letter mailed on June 15 constitutes the Department's final determination of the matter. The taxpayer has 90 days, beginning June 15, in which to appeal the Department's final determination to the Tax Court. If the taxpayer does not file an appeal with the Tax Court within three years from the date the taxpayer filed his or her claim for refund, the taxpayer is precluded from filing an appeal with the Tax Court.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive, flowing style with a large loop at the beginning of the first name.

John Eckart
Commissioner